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[ORIGINAL CIVIL JURISDICTION]
HORNE, J.
May 14, 1937.

IN THE MATTER OF TRUSTS OF THE WILL OF WAN ENG KIAT DEACEASED. ESTATE & TRUST AGENCIES (1927) LTD. vs. WAN BOON LIM & OTHERS

Will—Construction—residuary estate—income—life interest—death of residuary legatee—gift over.

A testator gave his residuary estate, after payment of pecuniary legacies. to trustees upon trust until twenty one years after the death of W.B.S., one of the testator's sons, to receive the income thereof and. after payment of expenses and certain specific monthly allowances. to divide the balance of such income into five shares and to distribute the same monthly among his two sons, W.B.C. and W.B.L. and his grandson W.C.I. In the event of W.B.L. or W.C.I. being infants at the time of the testator's death the will provided for the payment to the mother of W.B.L. the monthly sum of $100 and to the mother of W.C.I. the monthly sum of $50 for their maintenance and for the accumulation of the balance of their shares during their minority such accumulations to be paid on their respectively attaining the age of 21 years. And, in case any of the said residuary legatees should die without leaving male issue the testator directed the share of such residuary legatee to revert to the testator's estate. After the expiration of the period from the date of the death of W.B.S. the testator directed "the whole of my said residuary estate as shall not consist of money to be converted into money and the moneys produced by such conversion together with my ready money to be divided amongst the male issue or remoter male descendants of the said residuary legatees *per stirpes* and not *per capita*." In an application to determine whether the one share which W.C.I. was entitled to out of the 5 shares in the income from the residuary estate of the testator passed to his legal personal representatives on his death or reverted to the residuary estate of the testator:—

Held, that the gift over was not repugnant to the prior gift and accordingly the share to which W.C.I. was entitled did not pass to his legal personal representatives but reverted to the residuary estate of the testator and might be accumulated for the period allowed by law and passed to the male issue of the residuary legatees.

ORIGINATING SUMMONS

Sammy for the plaintiffs.

Eber for the defendants.

H. R. S. Zehnder for Mr. Lim Koon Teck, Registrar. Supreme Court. the representative of the Estate of Wan Chin Tua.

C. H. Koh, Assistant Official Assignee. for the Official Assignee of the Estate of Wan Chin Tua.

Cur. Ad. Vult.

HORNE. J.—The first question, viz. whether the estate duties payable on the cessor of two life interests under the will shall be charged upon the income or corpus of the residuary estate was decided in the course of the hearing.

According to the English authorities, where the interests which have ceased extend to less than the whole of the income of the trust property, the cessor attracts estate duty on a slice of the property sufficient to produce the income set free. This view has been already adopted here in a recent case, *Re Syed Hashim bin Kassim deceased*, 5 M.L.J. 245, where Adrian Clark J. went into the authorities very fully and there is no more to say than I follow his conclusions. There will be a declaration accordingly.

The major question on which I reserved judgment is:

> "Whether under the provisions of clause 25 of the will of the Testator the one share which Wan Chin Inn was entitled to out of the five shares in the income from the residuary estate of the Testator passes to his legal personal representative on his death or reverts to the residuary estate of the Testator."

The testator died in 1919 and by clause 25 of his will, after payment of pecuniary legacies, devised his movable and immovable property to trustees upon trust until 21 years after the death of Wan Boon Seng to receive the income thereof and to apply it in the payment of expenses, in the payment of a monthly allowance given by clause 4 of the will to Toek Nya Chick during her life, another monthly allowance given by clause 22 to Quek Ah Gek, and "to divide the balance of such income into five equal shares and to distribute the same monthly as follows:—that is to say, two shares to my son Wan Boon Chwee, two shares to my son Wan Boon Lim and one share to my grandson Wan Chin In, the son of Wan Boon Seng, but should the said Wan Boon Lim or Wan Chin In be infants at the time of my death then to pay to the mother of Wan Boon Lim the monthly sum of $100 and to the mother of the said Wan Chin In the monthly sum of $50 for their support maintenance and education.....and the receipt of such mothers for same shall be a good and sufficient discharge to my trustees and to accumulate the balance of their said shares during their minority and to pay the accumulations thereof to them on their respectively attaining the age of 21 years should any of the said residuary legatees die without leaving male issue then I direct the share of such residuary legatee to revert to my estate.

"After the expiration of the period of twenty-one years from the date of the death of the said Wan Boon Seng I direct the whole of my said residuary estate as shall not consist of money to be converted into money and the moneys produced by such conversion together with my ready money to be divided amongst the male issue or remoter male descendants of the said residuary legatees *per stirpes* and not *per capita*."

One thing at least is clear and that is that the expression "the said residuary legatees,"

which occurs twice in the passage quoted, viz. once in reference to the gift of the balance of income and once in reference to the gift of the corpus, means the three named persons, Wan Boon Chwee, Wan Boon Lim and Wan Chin In. The more difficult matter is to arrive at what the testator intends by his gift of income to these three persons.

Several propositions have been put forward in argument: one is that the gift of income is an annuity or is something in the nature of an annuity for a fixed term, viz the life of Wan Boon Seng and 21 years. If that is so, then, on the death of the annuitant during the period his interest would pass to his legal personal representative.

Another is that this gift is an indefinite gift of income and carries the corpus with it, alternatively that even if it is a definite gift, on the death of any person entitled to one of the shares, his interest reverts to the estate and passes to the surviving recipients of income.

But it is to be noted that it is not a fixed sum per annum or per mensem that is given. The balance of the income is given in shares, and may in course of time amount to the whole of the income, though that is not so at the date of the testator's death. It is further submitted that the gift over in the event of the death of a residuary legatee expressed in the words "should any residuary legatee die without leaving male issue then I direct the share of such residuary legatee to revert to my estate" is repugnant to the prior gift of the income and therefore void.

A very large number of cases, almost every possible reported case, relating to the propositions put forward, have been cited; and I turn with some relief to the passage in the judgment of Lindley L.J. in the case of *In re Morgan* (1893) 3 Ch. 222, where at pp. 227-8 the learned Lord Justice says:—"I should have thought that, upon the will, the matter was reasonably plain; but we are pressed with authorities. Now, I do not see why, if we can tell what a man intends, and can give effect to his intention as expressed, we should be driven out of it by other cases or decisions in other cases. . . . Of course there are principles of law which are to be applied to all wills; but if you once get at a man's intention, and there is no law to prevent you from giving it effect, effect ought to be given to it."

Can it be said that upon the will this matter of the gift of income is reasonably plain?

First of all it is not a gift of a fixed sum, and although it is something in the nature of an annuity, nevertheless a simple bequest of an annuity implies no more than a gift for life unless there is something in the will to enlarge the gift (*Potter* v. *Baker*, 13 Beav. 293).

On this will it is submitted that as the trust is to endure for the life of Wan Boon Seng and 21 years thereafter, the gift of income is first of all *pur autre vie* and then for a term in addition. But that construction, if the residuary legatees, as they are called, lived so long, which is possible, would involve that their incomes ceased when the 21 years expired and their descendants took the property from which the income is derived. The case of *In re Ord* (12 Ch. D. 25) has no application, because there the gift was not a simple bequest as in this will, but is expressed to be an annuity of £40 from the date of the annuitant's majority to the death or marriage of the testator's wife. All I think that can be said, is, that the gift in this will amounts to a gift of an equitable life interest in the residual income of a trust estate. I regard a direction to distribute a share of the balance of that income monthly to named persons as a direction to pay such persons so long as they are alive to receive such shares. The testator's primary intention by clause 25 is to tie up the property for the longest period permissible by law and then give it to the male issue of the residuary legatees. Difficulties may arise when that period has elapsed if any of the so-called residuary legatees are still alive, but those difficulties will be resolved when that day comes. Nevertheless, the testator appears to have made his will on the assumption that the residuary legatees will not survive Wan Boon Seng by 21 years, because he has given life interests in various items of immovable property which he also has declared form part of his residuary estate.

He has also by the words "should any of the said residuary legatees die without leaving male issue then I direct the share of such residuary legatee to revert to my estate" shown a clear intention as to what is to result if that contingency happens.

There is no necessity for him to provide for the event of any of them dying leaving male issue for he has by the same clause 25 given the whole of his estate to such male issue. In such an event the income must follow the principal as accessory, and if none of that class yet exist, the income will during the period the law allows for accumulation be accumulated and added to the principal. After that it will be paid to the male issue or whoever is then entitled. There is nothing before me to show whether or not Wan Boon Chwee and Wan Boon Lim have male issue, but as counsel has been appointed to represent the class of persons eventually entitled I assume such persons exist or may still come into existence.

Therefore I hold that the gift over is not repugnant to the prior gift and accordingly the one share which Wan Boon Inn was entitled to does not pass to his legal personal representative, but reverts to the residuary estate of the testator and may be accumulated for the period

allowed by law and passes to the male issue of the residuary legatees and that the assignees of Wan Boon Chwee and Wan Boon Lim have at this stage no interest therein.

I have not dealt at any length with Mr. Eber's argument that the gift of income is an indefinite gift of income and therefore attracts the corpus. First of all such a conclusion would defeat the clear intention of the testator that the residuary legatees should not have more than a life interest in their shares of income, and secondly such an interest is not indefinite and the submission has therefore no solid foundation.

Order accordingly.

Solicitors for the Plaintiffs—*Johannes & Sammy.*

Solicitors for the Defendants—*Chan & Eber.*

Solicitors for Mr. Lim Koon Teck—*Zehnder Bros.*

[ORIGINAL CIVIL JURISDICTION]

HORNE, J.

May 18, 1937.

IN THE MATTER OF THE TRUSTS OF THE WILL OF LOOK YAN KIT DECEASED. LOOK CHAN WAI & ANOR. vs. LOOK CHAN TOCK & ORS.,

[SINGAPORE ORIGINATING SUMMONS No. 39 of 1937.]

Will—construction—residuary estate—vesting—contingent interests—gift of monthly allowances—forfeiture clause—applicability of.

A testator by his Will gave to certain named persons monthly allowances which were payable out of his residuary estate for a period of twenty years from his death; the gift was a vested gift subject to being divested. The Will provided that no share of any person deriving any share benefit or interest thereunder should be deemed to have become vested in such person unless such person should be living at the expiration of the said period of twenty years. The will further declared that "in case any person to whom a share in my residuary estate is hereinbefore given shall at any time before the same become absolutely vested in such person alienate or charge the same or the income thereof or of any part thereof .....then the trust hereinbefore contained in favour of such person as aforesaid shall immediately thereupon cease and determine and my said will shall be read and construed and take effect in all respects as though such person had died on the day preceding the date of distribution."

Held, on the true construction of the Will, that the word "income" in the forfeiture clause above set out means the income of the share of the residue and that in so far as they are payments in the nature of annuities for a fixed term of twenty years the monthly allowances are not subject to forfeiture.

Held, further that in so far as the restraint clause will operate on an expectant share of the residuary estate, there is an effective gift over.

ORIGINATING SUMMONS.

The Summons was issued by certain beneficiaries under the Will of the testator. By it they propounded certain questions under the Will for determination by the Court.

The Will of the testator was dated the 30th December, 1926. He died on the 11th July, 1931 and his will was proved on the 27th July, 1931.

The provisions of the will material to this report and the questions raised for determination by the Originating Summons are set forth in the judgment of Horne, J.

Smith for Plaintiffs

Page for Defendants.

Cur. Ad. Vult.

HORNE, J.—The question raised on this Originating Summons is whether or not the provisions for forfeiture contained in paragraph 18 of the will would become applicable and if so to what extent in the event of the plaintiffs mortgaging or attempting to mortgage

(a) the plaintiffs' share of income;

(b) the plaintiffs' share in the residuary estate.

The question does not appear to me to be very accurately put, for it cannot be said strictly that the plaintiffs have a share of income. The word "share" is only used with reference to the residuary estate. The accurate description under (a) appears to me to be "monthly allowance." These monthly allowances are given by clause 7 of the will and are, by that clause, expressed to be payable until the date of distribution, i.e. twenty years from the death of the testator. Consequently they may be described as payments in the nature of annuities for the term of 20 years. But having regard to clause 8, the gift which under clause 7 is a vested gift, is subject to being divested. Again by clause 9 the amount may be increased.

Clause 15 is in the following terms:—"I declare that no share of any person deriving any share benefit or interest under this my will shall be deemed to have become vested in such person unless such person shall be living at the expiration of the said period of twenty years." This clause cannot, in my opinion, have any effect upon the gifts of monthly allowances. It relates so far as it has any effect at all solely to persons who are entitled to a "share" under clause 11 or who may become entitled under clauses 12, 13 and 14.

The restraint clause, clause 18, declares "that in case any person to whom a share in my residuary estate is hereinbefore given shall at any time before the same become absolutely vested in such person alienate or charge or attempt to alienate or charge the same or the income thereof or of any part thereof.....then the trust hereinbefore contained in favour of such person as aforesaid shall immediately thereupon cease and determine and my said will shall be read and construed and take effect in all respects as though such person had died on the day preceding the date of distribution."